

REMARKS

The Office Action mailed October 1, 2007, has been carefully considered. In response thereto, the Applicants respectfully submit that the application as it stands is in condition for allowance. Accordingly, reconsideration and withdrawal of the outstanding Office Action and issuance of a Notice of Allowance are respectfully solicited in view of the following remarks.

At the outset, the Applicants note with appreciation that the previous ground of rejection has been withdrawn. Instead, claims 1-8 and 15-22 are rejected under 35 U.S.C. § 103(a) over *Carter et al* (US 2001/0031999) in view of *Reiss* (U.S. Patent No. 5,324,317). For the reasons set forth below, the Applicants respectfully traverse.

First, it is well settled law that it is necessary to consider all teachings of a reference, including those that teach away from the invention. *W. L. Gore & Associates, Inc., v. Garlock, Inc.*, 721 F.2d 1540, 1550, 220 U.S.P.Q. 303, 311 (Fed. Cir. 1983). Failure to consider all such teachings is reversible error. *Id.*

In that regard, *Carter et al* contains strong teaching away from the combination of references asserted in the Office Action. That reference discusses *Reiss* in paragraph [0010] as one of the prior-art references whose deficiencies are sought to be overcome. To that end, *Carter et al* emphasizes using a single feed electrode and a return electrode (paragraphs [0013], [0033] and [0051]). However, the Office Action applies *Reiss* for teaching the use of at least two pairs of electrodes. Therefore, a person having ordinary skill in the art who had reviewed the applied references would have been strongly motivated *not* to combine the references as set forth in the Office Action.

Second, the Office Action acknowledges that neither of the references teaches that the electrodes would be implanted. Instead, it alleges that it would have been obvious “since such

a modification would provide the system with a method for achieving deeper stimulation of tissue, as well as a more aesthetically pleasing system for the patient.”

In response, the Applicants respectfully submit that the rationale set forth in the Office Action is based purely on impermissible hindsight reconstruction of the invention. The Office Action makes no showing in the art as to which type of electrode would achieve deeper stimulation of the tissue or that implantable electrodes would be more pleasant for the patient. Instead, the only such teachings come from the present invention itself.

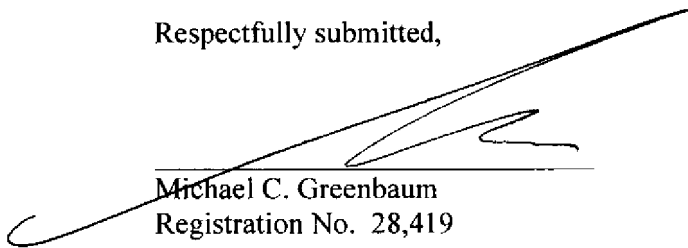
In summary, not only do the applied references teach away from combining them as proposed in the Office Action, but also, such a combination would not even have resulted in the present claimed invention. Therefore, the Applicants respectfully submit that the present claimed invention would not have been obvious over the asserted combination of references.

In light of the above, the Applicants respectfully submit that the application is in condition for allowance. Notice of such allowance is respectfully solicited.

In the event there are any questions relating to this Response or to the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that the prosecution of this application may be expedited.

Please charge any shortage of fees, or credit any overpayment thereof, to BLANK ROME LLP, Deposit Account No. 23-2185 (000309-00053). In the event that a Petition for Extension of Time is required to render the present submission timely and either is not submitted herewith or does not suffice to render the present submission timely, the Applicants respectfully petition under 37 C.F.R. § 1.136(a) for such an extension of time for as many months as are necessary to render the present submission timely. Any fees due are authorized above.

Respectfully submitted,



Michael C. Greenbaum
Registration No. 28,419

BLANK ROME LLP
600 New Hampshire Avenue
Washington, D.C. 20037
(202) 772-5800

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